IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.176/2000
AND
CROSS OBJECTIONS NO.11/2000

FIRST APPEAL NO.176/2000

1.State of Goa,
Rep. by Executive Engineer,
Works Division XXI (PHE),
Public Works Department,
Fatorda, Margao, Goa.

2. Dy. Collector & L.A.O.,
Quepem - Goa. ..... Appellants.

V/s.

1. Antonio Almeida,
2. Jose Almeida,
3. Francisco Almeida,
4. Manuel Almeida,

All resident of Marchon
Building, 1st Floor,
Margao, Goa. ..... Respondents.

CROSS OBJECTIONS NO.11/2000

1. Antonio Almeida,
2. Jose Almeida,
3. Francisco Almeida,
4. Manuel Almeida,

All resident of Marchon Building,
1st Floor, Margao, Goa.
Objectors No.1, 3 and 4 represented
by their attorney Objector
No.2 Jose Almeida. ..... Objectors.

V/s.

1. State of Goa,
Rep. By Executive Engineer,

Works Division XXI (PHE),
Public Works Department,
Fatorda, Margao, Goa.

2. Dy. Collector & L.A.O.,
Quepem - Goa. ..... Appellants.

Versus

1. Antonio Almeida,
2. Jose Almeida,
3. Francisco Almeida,
4. Manuel Almeida,
All resident of
Marchon Building,
1st Floor, Margao, Goa. ..... Respondents.

Mr. H.R. Bharne, Government Advocate for the appellants.

Mr. M.B. D'Costa, Sr. Advocate with Mr. J.A. Lob, Advocate for the respondents/Objectors.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE : JUNE 23, 2004.

ORAL JUDGMENT : (Per BRITTO, J.)

Both the parties herein challenge the correctness of the Award dated 4.12.1999 of the learned District and Sessions Judge, Margao ('Reference Court', for short) in the Land Acquisition Case No.115/1992.

2. Some facts are required to be stated to dispose of the appeal and the cross objections filed.

The respondents were the owners of a property surveyed under Chalta No.1 of P.T. Sheet No.30 situated at Fatorda within the limits of Margao Municipal Council. A part of this property admeasuring about 5920 sq. metres was acquired by the Government for the purpose of construction of police quarters by virtue of a Notification published on Gazette dated 5.7.1981 and later by the Award dated 23.11.1981 (Exhibit AW.1/G), the Land Acquisition Officer ('LAO', for short) was pleased to award to the respondents compensation at the rate of Rs.90/- per sq. metre.

3. The respondents, by virtue of the permission obtained on or about 15.09.1976 from the Margao Municipal Council, developed another part of the same property into about 97 plots, and presumably for the said development left spaces for the roads, open spaces, etc.

4. Admittedly, it is one of such a roads belonging to the respondents which came to be acquired by virtue of the Notification published under Section 4 (1) of the Land

Acquisition Act, 1894 ('Act', for short) on Gazette dated 22.1.1987 and by an Award dated 23.1.1990 (Exhibit AW.1/D), the LAO was pleased to award to the respondents compensation at the rate of Rs.10/- per sq. metre for the portion of the road and Rs.124/- per sq. metres for the remaining land. Total area acquired by the said Notification was 12,929 sq. metres.

5. The respondents sought a reference to be made for enhancement of compensation and in the said reference sought an enhanced compensation at the rate of Rs.400/- per sq. metre. However, it could be seen that the respondents' expert, namely AW.3, Engineer Ernesto Moniz had valued the respondents' acquired land at the rate of Rs.146/- per sq. metre. The respondents, in the course of evidence before the learned Reference Court, sought compensation at the rate of 61 % of Rs.400/-, based on a principle adopted by the LAO in Award dated 1.1.1990 (Exh.AW.1/E) which pertained to the acquisition for New Marlem road.

6. The Respondents had produced several awards/sale deeds to support their claim for enhancement. Exhibit AW.1/E was the said award dated 1.1.1990 in respect of 10135

sq. metres acquired by Notification published on 22.1.1987 by which Rs.20/- per sq. metre were awarded for the road already constructed and and Rs.33/- per sq. metres for remaining land. AW.1/G was the said award of the LAO dated 23.11.1981 which was in respect of the same property. Exhibit AW.1/A was an award of the learned Addl. District Judge, Margao dated 14.3.1988. It was in respect of acquisition of an area of about 247 sq. metres acquired for widening of eastern by-pass at Gogol by Notifications dated 17.12.1981 and 28.1.1982 by which compensation of Rs.40/- per sq. metre awarded by LAO was enhanced to Rs.120/- per sq. metre based on award Exhibit AW.1/G. Exhibit AW.1/I was an award of the learned District Judge dated 28.11.1988 by which compensation awarded at the rate of Rs.60/- per sq. metre was enhanced to Rs.200/- per sq. metre for an area of 12412 sq. metre which area was adjacent to Margao-Curtorim road. Exhibit AW.1/J was a sale deed dated 25.10.1984 of the very property of the respondents by which the respondents had sold a plot at the rate of Rs.300/- per sq. metre. Exhibit AW.1/K was another sale deed dated 16.6.1986 of plot No.40 admeasuring 418 sq. metres which was sold at the rate of Rs.330/- per sq. metre.

7. The learned Reference Court expressed its dilemma to choose the most appropriate sale deed/award to be used as guide to fix compensation and rightly observed that it had to choose a sale deed, which was the most proximate in terms of time and distance, but wrongly chose the Award Exhibit AW.1/G in preference to the sale deed Exhibit AW.1/K which, in fact, was the closest, both in point of time as well as distance and was of the same property. The learned Reference Court did not assign any reason as to why the learned reference Court was choosing Award Exhibit AW.1/G in preference to Sale Deed Exhibit AW.1/K. As stated before, if at all any Award or sale deed could be taken into consideration to fix the price of the acquired land, it had to be the sale deed Exhibit AW.1/K because it pertained to the same land which was acquired, as well as it was also closest in terms of time.

8. The learned Reference Court, after considering the Award Exhibit AW.1/G and further considering that the Award Exhibit AW.1/G pertained to the undeveloped land, increased the price of the acquired land to Rs.63/- per sq. metre. The approach of the learned reference Court,

in this regard, has been wholly erroneous. Admittedly, the land of the Award Exhibit AW.1/G as well as the land of the sale deed Exhibit AW.1/K, were lands on which a construction could have been made, while the plot of the sale deed which, as already stated, was a strip of land acquired by the Government, over and above the existing road, was not suitable for development.

9. At this stage, we may refer to the evidence of AW.1, Jose Almeida who has claimed to be a Civil Engineer. He stated that the acquired land was a bharad developed land, suitable for the construction of buildings. We are quite amused at the said statement, as it comes from a person who claims to be a Civil Engineer. The evidence on record, clearly shows that although initially the respondents had left the said road in connection with the development of the plots carried out by them, subsequently, the said road was asphalted by P.W.D. This is particularly evident from the Award of the LAO (Exhibit AW.1/D), the statement made by AW.3, Shri Moniz and the submissions made by the learned Advocate of the respondents before the learned reference Court.

10. Admittedly, the acquired land being a tarred road,

subsequently asphalted by the P.W.D., could not have been compared either with the Award Exhibit AW.1/G or for that matter, the sale deed Exhibit AW.1/K although the lands covered by the said Award/sale deed were of the very property which has been acquired. Nevertheless, the question which ought to have been answered as to what was the value to be given to the respondents who had remained to be the owners of the land under the said road. In other words, the respondents had continued to have bare or naked rights in the property acquired by the Government and this was otherwise admitted on behalf of the appellants by the very fact they chose to acquire the said road inspite of the fact that P.W.D. had earlier tarred the said road.

11. The learned Reference Court placed reliance on the case of ***Secretary of State vs. Sm. Dulali Bala Debi and ors.*** (A.I.R. 1938 Calcutta 75) and following the ratio of the said case awarded 1/4th of the market value of Rs.180/- at which the learned Reference Court had valued the land of Exh. AW.1/G. In that case, certain premises abutting in a common passage with an interest in the common passage were acquired first and then what was acquired was the common passage. The Collector came to the

conclusion that the existence of the passage was considered at the time of valuing the premises certified by it and, therefore, the owners were not entitled to separate compensation for the land covered by the passage. The Tribunal (Reference Court) came to the conclusion that the land of the common passage ought to have been valued at 1/4th rate given for the surrounding land and it is this principle which came to be upheld by the Calcutta High Court in the decision cited herein above. However, what the Calcutta High Court noticed was that what was acquired was the premises (No.107, Lake Road, wester portion) with interest in the common passage and that there was a possibility of the said common passage being purchased for the beneficial enjoyment of the adjoining premises, namely No.106, Lake Road. The High Court further observed that the subject-matter acquired was not nominal or negligible, but was substantial. The principle adopted in the case of ***Secretary of State vs. Sm. Dulali Bala Debi and ors.*** (supra) cannot be invoked squarely and applied to the case at hand because the acquired road could not have been purchased by any one as it was meant for the use of the neighbouring plot holders as well as the public.

12.Shri H.R. Bharne, the learned Government Advocate has submitted that what was acquired was a road and, therefore, the respondents were suitably compensated for the said road by the LAO by awarding Rs.10/- per sq. metres and, therefore, there was no question of the respondents being granted any enhancement.

13.On the other hand, learned Senior Advocate Shri M.B. D'Costa has submitted that in a similar case, in Award Exh. AW.1/E, the LAO had awarded Rs.20/- per sq. metres for the land similar to the land in this case, whilst he had awarded Rs.33/- per sq. metre for the remaining land and that percentage works out to 61 % of the price paid to the remaining land. It is submitted by Shri D'Costa that the Government cannot follow one standard in one case and another standard in another case and since the amount awarded under the said Award was paid, the same principle be followed in this case as well.

14.The LAO in the Award Exh. AW.1/E did award Rs.20/- per sq. metre which works out to 61 % of compensation paid in relation to the remaining land, i.e. Rs.33/- per sq. metre. However, it can be seen from the said award that he had not fixed the said prices based on any principle

and as far as percentage is concerned, it does not appear that the learned LAO was even aware of the same. We are not inclined to adopt the approach adopted by the LAO in Award Exh. AW.1/E. As stated before, what has been acquired in this case is the nominal or naked right of ownership of the respondents in the said road, which was subsequently asphalted by the Government. In our opinion, in such a case, the market value to be given to such a land ought to be 20 % of the value fetched by the owners to the surrounding or adjacent land and that being the position, once the price fetched for sale deed, Exh. AW.1/K dated 16/6/1986 is taken into consideration, the said market value works out to Rs.66/- per sq. metre which, in our opinion, will be the correct market value payable to the respondents on account of the acquisition of their right of ownership in and upon the said road.

15. As a result, we dismiss the appeal and allow cross objections. The market value of the acquired land/road is fixed at Rs.66/- per sq. metre. The respondents would be entitled to all the statutory benefits on the said market value to be paid to them, by virtue of this Judgment. The finding as regards the date of possession was not challenged by any of the parties before this

Court. Parties to bear their own costs.

S.A. BOBDE, J.

N.A. BRITTO, J.

ssm.